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29 September 2005

BRA100575.E

Brazil: Laws concerning child abuse and/or neglect and their enforcement; protection and services for children who are victims of abuse and/or neglect (2003-2005)

Research Directorate, Immigration and Refugee Board, Ottawa

Legislation

The Statute of the Child and the Adolescent (Estatuto da Criança e do Adolescente, ECA) (UNICEF n.d.) was enacted in July 1990 (ANCED 2004, 15; Plan n.d.) and seeks to protect all children and adolescents (ANCED 2004, 10). For the purposes of the statute, a child is defined as a person 12 years old and under, and an adolescent as someone between 12 and 18 years old (ibid.; UN 17 Dec. 2003, Para. 35). Also known as Law No. 8069, the ECA replaced the national Code of Minors and enshrined the rights of minors within the country's constitution and incorporated into it principles of international agreements such as the Convention on the Rights of the Child (ibid., Para. 36; Plan n.d.).

The ECA is divided into two parts; the first outlines the basic rights of minors including the "obligation, defined as being everybody's, to prevent the occurrence of any threat or violation of children's and adolescents' rights (arts. 70 to 85)" (UN 17 Dec. 2003, Para. 44; Plan n.d.). The second part of the ECA outlines a number of provisions for supporting minors, including "protection measures for children and adolescents in a risk situation (arts. 98 to 102)" (UN 17 Dec. 2003, Para. 44; Plan n.d.).

To assist in the implementation of the ECA, in October 1991, Law 8242 provided for the establishment of the National Council for the Rights of Children and Adolescents (Conselho Nacional dos Direitos da Criança e do Adolescente, CONANDA [UNICEF 23 Aug. 2005]) (UN 17 Dec. 2003, Para. 53). In addition to CONANDA, a number of state and municipal-level councils were established as well as "permanent and autonomous" Guardianship [or Tutelary] Councils (ibid., Para. 66; ANCED 2004, 19). According to Brazil's 2003 state party report to the UN Committee on the Rights of the Child, "[b]y 1999, in addition to the national council and all 27 state councils, 3,948 municipal councils were created, in 72 per cent of Brazilian cities" (UN 17 Dec. 2003, Para. 58).

Protection and services

The 2003 state party report to the United Nations (UN) also provided the following information about services to assist minor victims of abuse and neglect:

The states of the Federation are in the process of organizing specialized care services with a view to providing proper treatment for the victims. Universities and research centres have been studying and diagnosing the situation, suggesting protective measures, orienting public policies and training professionals that work in the area.

There exists a series of services in Brazil organized according to the resources of each State and municipality, such as: maltreatment committees in paediatric hospitals, Dial-Denunciation, Legal Aid Services for Children, etc., but which are still not fully used, either due to lack of information or omission.

Serious situations are reported to the authorities: the Public Prosecution Service or the judiciary. A psychosocial and psychiatric study carried out by professionals assists the judge on the appropriate course to take. Many of these cases involve loss of custodial power and the children are sent for adoption or some other type of solution (extended family, children's home, etc.) (ibid., Paras. 274-276).

In its 2004 *Report of Civil Society on the Situation of the Rights of the Child and the Adolescent in Brazil*, the Fortaleza-based civil society organization National Association of Defense Centers for the Rights of the Child and the Adolescent (Associação Nacional dos Centros de Defesa da Criança e do Adolescente, ANCED) (Consciencia 2004) stated that

[t]he special Courts for the Child and Adolescent and the Tutelary Councils should be the preferential "portals" to this other network of protection/charge of responsibility of the rights of the child and adolescent. To support this "access to justice," this "administration of justice to anyone

who needs it," the [ECA] establishes the essential intervention of

- The Prosecution Service (Federal and State),
- Law Enforcement Agencies (Federal Police, Highway Police, Civil and Military Police),
- The Public Defenders Office and other Social Services (the Brazilian Bar Association, Defense Centers and other social bodies of defense, etc.)
- Multi-professional legal teams, etc. (ANCED 2004, 19)

In addition, ANCED listed measures geared towards the protection of minors including "[s]pecial protection measures (legal or administrative), applicable to children and adolescents with violated or threatened rights"; non-penal measures "applicable to anyone who violates the norms of child and adolescent protection (article 194 and following)"; and "[p]enal sanctions [against] persons sentenced for committing crimes against children and adolescents (article 228 and following and all Brazilian penal legislation)" (ibid., 19-20).

In July 2005, the national government announced that in August 2005 its "School that Protects" program would expand into 11 municipalities in six states (*Brazzil* 4 July 2005). Established by the Ministry of Education, the program seeks to establish a network of protection for victims by training teachers "to identify signs of violence in their students," and providing parents and relatives with methods to address the issue (ibid.).

Effectiveness of government efforts

Although the United Nations Children's Fund (UNICEF) described the ECA as "one of the most advanced pieces of national legislation on child rights" (2004, 34), various sources have pointed out that the law's implementation has fallen "short of the legal norms" (ANCED 2004, 18; *Brazzil* 22 Oct. 2004; COAV 13 July 2005; *Country Reports 2004*, 28 Feb. 2005, Sec. 5). According to Augusto Zimmerman, a Brazilian professor of law, there is a "disturbing distance" between what is written into the law and how it is actually put into practice (*Brazzil* 22 Oct. 2004). *Country Reports 2004* also noted "[a]llegations of abuse of minors and prosecution of crimes against children were not pursued adequately or aggressively" (28 Feb. 2005, Sec. 5).

In its 2004 report, ANCED criticized the councils, noting that the federal, state and municipal entities lacked resources to carry out their roles effectively (2004, 18). The ANCED report also stated that "[i]n terms of quality, there is a low level of effectiveness in the control actions (monitoring) of these councils" (2004, 21). In addition, the ANCED report mentioned that ECA coverage within the country's legal system was physically limited to urban areas (2004, 20).

In July 2005, the Brazilian chapter of the international organization Children and Youth in Organised Armed Violence (COAV) published an article that provided seven expert opinions on the ECA and its effectiveness in protecting minors during its 15 years in existence (13 July 2005). In summary, experts concluded that while the ECA has increased the profile and awareness of minors' rights across the country; much work still needs to be done with regard to its implementation (COAV 13 July 2005).

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

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